

#### **§ 801.305**

been made as required by paragraph (b) of this section.

(b) The challenger shall file his challenge in triplicate and shall have a copy of it served on the challenged person. That service may be in person or by first-class mail properly addressed with charges prepaid.

#### **§ 801.305 Rejection and docketing of challenge.**

(a) When a challenge is not timely filed or served or does not meet the requirements of § 801.304, it shall not be entertained but shall be rejected.

(b) When a challenge is not rejected under paragraph (a) of this section, the hearing officer shall place it on the docket.

#### **§ 801.306 Summary denial of challenge by hearing officer.**

If on review of a challenge a hearing officer determines that the information, even if true and known at the time of listing, would not have disqualified the challenged person, he shall issue a decision denying the challenge without further proceeding and notify the parties of his reasons for this decision.

#### **§ 801.307 Notice of hearing.**

After docketing, and if not denied under § 801.306, the challenge shall be set for hearing. The challenger and the challenged person shall be sent a notice of the date, time, and place of the hearing and advised of the rights and duties of the parties including the right to request a subpoena. The notice of hearing shall be dated and the date of the hearing shall not be less than 5 days from the date of that notice. The notice of hearing shall be served on the challenger and the challenged person either personally or by mail.

#### **§ 801.308 Rights and duties of parties.**

(a) The challenger has the burden of proceeding and proof at the hearing and shall appear personally or with a representative to prosecute the challenge, except that when a continuance is sought the challenger may appear by a representative. If a challenger fails to appear personally to prosecute the challenge, the hearing officer shall issue a decision denying the challenge

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or make such other disposition as is warranted by the circumstances.

(b) The challenged person has the right to appear at the hearing personally or by or with a representative, and to present witnesses and documentary evidence in his behalf.

#### **§ 801.309 Continuance.**

A request for a continuance of a hearing shall be filed with the hearing officer at the place and on the day of the hearing. The hearing officer shall not grant a continuance except under extraordinary circumstances.

#### **§ 801.310 Hearing.**

A hearing shall be open to the public and held at the time and place specified in the notice of hearing. A hearing shall be recorded by an official reporter designated by the OPM, under the supervision of the hearing officer. A party may obtain a copy of the transcript from the official reporter at a rate not in excess of the maximum rate fixed by contract between the OPM and the reporter.

#### **§ 801.311 Powers of hearing officer.**

In addition to the powers otherwise vested in a hearing officer by this subpart, a hearing officer shall have the power to:

- (a) Administer oaths and affirmations;
- (b) Issue and quash subpoenas;
- (c) Regulate the course of the hearing;
- (d) Rule on offers of proof;
- (e) Permit a party to withdraw from a hearing on a showing of good cause;
- (f) Limit the number of witnesses whose testimony would be cumulative;
- (g) Deny a challenge for failure to prosecute;
- (h) Exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing; and
- (i) Take any other action in the course of the hearing consistent with law that is necessary to carry out the spirit and intent of the Act.

#### **§ 801.312 Witnesses.**

(a) A witness shall testify under oath or affirmation and shall be subject to cross-examination.